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 (Counsel continued on next page)

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO AND OAKLAND DIVISION

THOMAS FERNANDEZ and LORA SMITH,  
 individually and on behalf of a class of all other  
 persons similarly situated,

Plaintiffs,

vs.

K-M INDUSTRIES HOLDING CO., INC.;  
 K-M INDUSTRIES HOLDING CO., INC.  
 ESOP PLAN COMMITTEE; WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST; TRUSTEES OF THE WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST; CIG ESOP PLAN COMMITTEE;  
 NORTH STAR TRUST COMPANY;  
 DESIREE B. MOORE REVOCABLE TRUST;  
 WILLIAM E. MOORE MARITAL TRUST;  
 WILLIAM E. MOORE GENERATION-  
 SKIPPING TRUST; and DESIREE MOORE,  
 BOTH IN HER INDIVIDUAL CAPACITY  
 AND AS TRUSTEE OF THE WILLIAM E.  
 AND DESIREE B. MOORE REVOCABLE  
 TRUST'S SUCCESSOR TRUSTS NAMED  
 ABOVE,

Defendants

Case No. C-06-07339 MJJ

**STIPULATION AND [PROPOSED]  
 ORDER TO AMEND COMPLAINT**

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5 *Attorneys for Plaintiffs and the Proposed Class*  
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1 WHEREAS, the Court's Pretrial Order states that parties may be added until May 25,  
2 2007;

3 WHEREAS, under Federal Rule of Civil Procedure 15(a), a party may amend a pleading  
4 by leave of court or by written consent of the adverse party;

5 WHEREAS Plaintiffs wish to amend their complaint by adding parties and making  
6 certain other changes to the allegations of the complaint;

7 WHEREAS Defendants are willing to consent to the filing of the proposed first amended  
8 complaint ("FAC") only if conditioned on Plaintiffs' express agreement as follows:

- 9 · Defendants' consent is solely a procedural accommodation;
- 10 · Defendants' consent does not represent and will not be urged by Plaintiffs to  
11 represent any acknowledgment of the propriety of any or all of Plaintiffs' existing  
12 or proposed claims and/or amendments; and
- 13 · By entering into this Stipulation, no party waives any substantive rights.  
14 Defendants have not waived but instead have preserved in full all their substantive  
15 rights and defenses, including but not limited to: all substantive arguments that  
16 could have been interposed in or as part of an opposition to a motion for leave to  
17 amend the complaint; and defenses arising out of applicable statutes of limitation,  
18 and the doctrines of laches and estoppel.

19 Accordingly IT IS HEREBY AGREED AND STIPULATED by the parties through their  
20 counsel of record, as follows:

- 21 1. Plaintiffs may file a FAC in the form attached hereto as Exhibit 1;
- 22 2. Defendants' consent to the filing of the FAC is solely a procedural  
23 accommodation;
- 24 3. Defendants' consent does not represent and will not be urged by Plaintiffs to  
25 represent any acknowledgment of the propriety of any or all of Plaintiffs' existing  
26 or proposed claims and/or amendments; and
- 27 4. By entering into this Stipulation, no party waives any substantive rights.

Defendants have not waived but instead have preserved in full all their substantive rights and defenses, including but not limited to: all substantive arguments that could have been interposed in or as part of an opposition to a motion for leave to amend the complaint; and defenses arising out of applicable statutes of limitation, and the doctrines of laches and estoppel.

Dated: May 25, 2007

LEWIS, FEINBERG, LEE,  
RENAKER & JACKSON, P.C.

By: /s/  
Todd Jackson  
*Attorneys for Plaintiffs  
and the Proposed Class*

Dated: \_\_\_\_\_

LOVITT & HANNAN, INC.

By: \_\_\_\_\_  
Henry Bornstein  
*Attorneys for Defendant K-M Industries  
Holding Co., Inc.; K-M Industries Holding  
Co., Inc. ESOP Plan Committee; and CIG  
ESOP Plan Committee*

Dated: \_\_\_\_\_

HENNIGAN, BENNETT & DORMAN LLP

By: \_\_\_\_\_  
Robert L. Palmer  
*Attorneys for Defendant William E. and  
Desiree B. Moore Revocable Trust; Desiree  
B. Moore Revocable Trust; William E.  
Moore Marital Trust; William E. and  
Desiree B. Moore Revocable Trust  
Generation-Skipping Trust; and Desiree  
Moore*

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Defendants have not waived but instead have preserved in full all their substantive rights and defenses, including but not limited to: all substantive arguments that could have been interposed in or as part of an opposition to a motion for leave to amend the complaint; and defenses arising out of applicable statutes of limitation, and the doctrines of laches and estoppel.

Dated: \_\_\_\_\_

LEWIS, FEINBERG, LEE,  
RENAKER & JACKSON, P.C.

By: \_\_\_\_\_

Todd Jackson  
*Attorneys for Plaintiffs  
and the Proposed Class*

Dated: May 25, 2007

LOVITT & HANNAN, INC.

By: \_\_\_\_\_

Henry Bornstein  
*Attorneys for Defendant K-M Industries  
Holding Co., Inc.; K-M Industries Holding  
Co., Inc. ESOP Plan Committee; and CIG  
ESOP Plan Committee*

Dated: MAY 25, 2007

HENNIGAN, BENNETT & DORMAN LLP

By: \_\_\_\_\_

Robert L. Palmer (MB)  
*Attorneys for Defendant William E. and  
Desiree B. Moore Revocable Trust; Desiree  
B. Moore Revocable Trust; William E.  
Moore Marital Trust; William E. and  
Desiree B. Moore Revocable Trust  
Generation-Skipping Trust; and Desiree  
Moore*

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1 Dated: May 25, 2007

MORGAN, LEWIS & BOCKIUS LLP

2  
3 By: /s/  
4 Nicole Diller  
5 *Attorneys for Defendant North Star Trust*  
6 *Company*

7 IT IS SO ORDERED.

8 Dated: May 29, 2007

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10 Hon. Martin J. Jenkins  
11 United States District Judge  
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